INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	4
Argument	7
Conclusion	16

CITATIONS

Cases:

Bedell v. *United States*, 78 F. 2d 358, certiorari denied, 296 U. S. 628	13
Brzezinski v. *United States*, 198 Fed. 65	14
Carantzas v. *Iowa Mutual Insurance Co.*, 235 F. 2d 193	13
Delaney v. *United States*, 199 F. 2d 107	12
Ettelson v. *Metropolitan Life Ins. Co.*, 164 F. 2d 660, affirmed, 317 U. S. 188	14
Fred Harvey Corp. v. *Mateas*, 170 F. 2d 612	13
Harrison v. *United States*, 200 Fed. 662	12
Hofstadter v. *Ruderman*, 118 F. Supp. 477	14
Ilseng v. *United States*, 120 F. 2d 823, certiorari denied, 314 U. S. 665	16
Langer v. *United States*, 76 F. 2d 817	12
Nicholls v. *Webb*, 8 Wheat. 326	15
Nye & Nissen v. *United States*, 336 U. S. 613	9
Ohio Associated Telephone Co. v. *National Labor Relations Board*, 192 F. 2d 664	13
Palmer v. *Hoffman*, 318 U. S. 109	15
Shepherd v. *Florida*, 341 U. S. 50	12
Shokuwan Shimabukuro v. *Higeyoshi Nagayama*, 140 F. 2d 13, certiorari denied, 322 U. S. 755	14
Smith v. *United States*, 236 F. 2d 260, certiorari denied, 352 U. S. 909	16
Stegemann v. *Miami Beach Boat Slips*, 213 F. 2d 561	16
Terry v. *United States*, 51 F. 2d 49	13

Cases—Continued

	Page
United States v. *Achilli*, 234 F. 2d 797	7, 8
United States v. *Costello*, 221 F. 2d 668	7, 8
United States v. *Doyle*, 234 F. 2d 788, certiorari denied, 352 U. S. 893	8
United States v. *Grayson*, 166 F. 2d 863	14
United States v. *Johnson*, 319 U. S. 503	9
United States v. *Moran*, 236 F. 2d 361, certiorari denied, 352 U. S. 909	8
United States v. *Rosenberg*, 200 F. 2d 666, certiorari denied, 345 U. S. 965	12
Vloutis v. *United States*, 219 F. 2d 782	10
Wattenmaker v. *United States*, 34 F. 2d 741	14
Statutes:	
Act of June 20, 1936, c. 640, 49 Stat. 1561, Sec. 1, 28 U. S. C. 695	15
Internal Revenue Code of 1939:	
Sec. 145 (b) (26 U. S. C. 1952 ed., Sec. 145 (b))	2, 4, 7
Sec. 3616 (a) (26 U. S. C. 1952 ed., Sec. 3616 (a))	2, 3, 7, 8
18 U. S. C., Sec. 2	9
28 U. S. C.:	
Sec. 1732	3, 14, 15
Sec. 2255	8
Miscellaneous:	
Federal Rules of Criminal Procedure, Rule 35	8
S. Rep. No. 1965, 74th Cong., 2d Sess.	15
III Wigmore on *Evidence* (3d ed.), Sec. 751	14
V Wigmore on *Evidence*, (3d ed.), Sec. 1521	15

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 842

ALLIED STEVEDORING CORPORATION, JOHN WARD, JOHN POTTER AND MICHAEL BOWERS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 19–39) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on February 4, 1957 (Pet. 40–41), and a petition for rehearing was denied on February 22, 1957. The petition for a writ of certiorari was filed March 16, 1957. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1). (Pet. 2.)

QUESTIONS PRESENTED

1. Whether the trial court erred in imposing sentences on the petitioners under Section 145 (b), Internal Revenue Code of 1939, in excess of those which could have been imposed under Section 3616 (a) of the Code.

2. Whether there was a fatal variance between the indictment and the proof as to petitioners Bowers and Potter.

3. Whether the petitioners were deprived of a fair trial by publicity in the daily press.

4. Whether the trial court erred in admitting a written memorandum of an instruction which petitioner Bowers had orally given to a Government witness.

5. Whether the trial court erred in admitting certain books, which were identified by a witness who had made totalling entries in them, as the daily business records of a third party who had died prior to the trial.

STATUTES INVOLVED

Internal Revenue Code of 1939:

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in

addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U. S. C. 1952 ed., Sec. 145 (b).)

SEC. 3616. PENALTIES.

Whenever any person—

(a) *False Returns.*—Delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made; * * *

* * * * *

he shall be fined not exceeding $1,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

(26 U. S. C. 1952 ed., Sec. 3616 (a).)

28 U. S. C.:

SEC. 1732. *Record made in regular course of business; photographic copies.*

(a) In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter.

All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility.

The term "business," as used in this section, includes business, profession, occupation, and calling of every kind.

* * * * *

STATEMENT

On July 29, 1953, the petitioners were indicted in the United States District Court for the Southern District of New York on charges of willfully attempting to evade a large part of the income taxes of the Allied Stevedoring Corporation ("Allied") for the calendar year 1951 by filing, and causing to be filed, a false return in violation of Section 145 (b) of the Internal Revenue Code of 1939. (R. 1.)[1] The indictment alleged that the corporation's net income and the tax liability reported in the returns and corrected were as follows (R. 1a–2a; 5):

Year	Reported		Corrected	
	Net income	Tax	Net income	Tax
1951	$137.49	$39.53	$71,846.07	$43,331.61

[1] The record consists of six volumes comprising the appendices to the briefs in the Court of Appeals. The appellants' typewritten appendix 1 through 1509 and the Government's printed appendix 1a through 843a are designated herein as "R". The Government's exhibit volume 1 through 50 is designated "Ex. Vol."

A jury trial began on February 6, 1956. (R. 3a.) On March 23, 1956, after twenty-eight days of trial (R. 1360), a verdict of guilty as charged was returned as to each of the petitioners. (R. 1496.) Motions to set aside the verdict as to each defendant were immediately made and denied. (R. 1499.) On April 16, 1956, Allied was fined $10,000; John Ward was fined $10,000 and one-half the costs of prosecution and sentenced to four years imprisonment; John Potter was sentenced to imprisonment for a year and a day; and Michael Bowers was fined $10,000 and one-half the costs of the prosecution and given a five-year prison term. (R. 6–12.) The convictions were affirmed by the Court of Appeals for the Second Circuit. (Pet. 19–41.)

Allied was a loading company operating on New York City public piers 84, 88, 90, and 92. (R. 245a–260a, 410a–414a; 627–632; Ex. Vol. 8–10, 22.) Its business was to load and unload trucks transporting cargo to and from the piers. During 1951 and at the time the corporate income tax return for that year was filed, petitioners Ward and Potter were the firm's president and vice president, respectively. (R. 820a–821a, 824a–825a; Pet. 5.) Petitioner Bowers served as the corporate secretary until August 1951, when he became secretary-treasurer, which he remained throughout the period involved. (R. 96a–97a, 814a.) The books of the corporation recorded disbursements in detail but indicated receipts only by showing bank deposits. (R. 21a–25a, 29a–40a.) The corporate return was prepared on the basis of these books and bank records. (R. 24a–25a.) Ac-

cordingly, receipts not deposited were omitted from it.

The Government's evidence showed that only $3,727 in cash had been deposited in the corporation's bank account (R. 726a; Ex. Vol. 34), even though the John White & Company had alone paid Allied $29,183 during the year for the rental of loading machines (R. 727a), which, it was conceded at trial, was paid in cash (R. 747a). In addition, Allied had been paid $50,972.60 for loading services performed by its employees and for the rental of other loading machinery owned by it, none of which had been deposited in the corporate account or recorded in its books.[2] (R. 694a–699a; Ex. Vol. 4, 33.) The evidence of this income was the testimony of numerous witnesses as well as cancelled checks, records, and loading tickets issued by Allied to the drivers of trucks that had been loaded. (R. 191a–196a, 197a, 206a–211a, 215a–218a, 220a–223a, 224a–228a, 229a–230a, 270a–271a, 272a–284a, 289a–291a, 515a–521a, 522a–526a, 537a–539a, 612a–667a, 701a–710a; Ex. Vol. 4.) The checks given in payment for these services were variously made payable to Allied (Ex. Vol. 6, 21), "cash" (Ex. Vol. 27, 29–30), a variety of fictitious payees,[3] and John

---

[2] This figure was reduced by $1,453.24 in the Government's computation of unreported income (Ex. Vol. 33) to eliminate a 7% charge made by Joseph A. Marcell, a collector, who collected $20,760.57 of the unreported income for the corporation. (R. 728a; Ex. Vol. 4.)

[3] *E. g.:* Mike Reilly, John Reilly, Tom Reilly, John Ryan, M. Sullivan. (R. 699a; Ex. Vol. 16, 19–20, 24, 48–49.) Though extensive efforts were made by the defense to show that these men were actually loaders operating independently on the same piers as the petitioners (R. 292a–371a, 375a–392a, 435a–

Marcell (Ex. Vol. 31, 32) who made collections for Allied (R. 136a). The fictitious payees were unknowingly used by the drawers of the checks upon instructions of employees of Allied (R. 227a, 235a; 847; Ex. Vol. 23). Some of the fictitious names were pseudonyms for petitioner Ward who used them in endorsing and cashing a number of checks. (R. 213a–214a, 582a–584a, 588a–591a, 618a). Other checks payable to fictitious payees were cashed by Edmund Leahy, an employee of Allied hired by petitioner Potter (R. 376a; 1180–1198), and Raymond Lussa, an acquaintance of petitioner Bowers (R. 604a–605a, 1180–1198).

The total of the unreported receipts shown by the Government's evidence was $73,850.19. (R. 728a–729a; 1274; Ex. Vol. 33.)

ARGUMENT

1. Petitioners first challenge the legality of their sentence under Section 145 (b) of the Internal Revenue Code of 1939, contending that they should have been sentenced under Section 3616 (a) of the Code. (Pet. 10.) This issue is presently before the Court in *United States* v. *Achilli,* 234 F. 2d 797 (C. A. 7th), pending on certiorari, this Term, Nos. 430 and 834, and *United States* v. *Costello,* 221 F. 2d 668 (C. A. 2d), pending on certiorari, this Term, No. 666.

447a, 453a–503a, 509a–514a, 540a–575a, 597a–617a), the Government's evidence established that only the Allied Stevedoring Corporation was permitted to do loading on piers 84, 88, 90, and 92 (R. 245a–260a, 410a–414a, 627–632; Ex. Vol. 8–10, 22) and that no men by these names were known to have done loading on them (R. 174a–175a, 264a–265a, 670a, 681a, 685a–688a, 691a).

425215—57——2

We doubt, however, that the issue is properly presented here, since it was not passed upon by the court below. Instead, the court held (Pet. 28) that the individual petitioners, had they been sentenced under Section 3616 (a), "would not be entitled to a release at the earliest until April 6, 1957," and that therefore the question was then premature.[4] Since April 6, 1957, it appears that petitioners have taken no steps to obtain a further adjudication of the legality of their sentence in either the District Court or the Court of Appeals.[5]

2. Petitioners Potter and Bowers contend that the trial court erred in denying a motion to dismiss the indictment against them made on the grounds that the evidence did not show that the manner in which they attempted to evade and defeat the corporation's income tax was by filing, or causing to be filed, a false return as charged in the indictment. (Pet. 11–13.) The court below properly rejected this contention, pointing out that, even assuming only Ward actually

[4] The case was decided by the Court of Appeals on February 4, 1957.

[5] In *United States* v. *Doyle*, 234 F. 2d 788 (C. A. 7th), certiorari denied, 352 U. S. 893, and *United States* v. *Moran*, 236 F. 2d 361 (C. A. 2d), certiorari denied, 352 U. S. 909, where the identical question was not properly raised in the trial court, this Court denied certiorari. In *United States* v. *Costello*, 221 F. 2d 668 (C. A. 2d), now pending on certiorari, this Term, No. 666, the issue was properly raised by motions under 28 U. S. C., Section 2255, and under Rule 35, Federal Rules of Criminal Procedure; and in *United States* v. *Achilli*, 234 F. 2d 797 (C. A. 7th), now pending on certiorari, this Term, Nos. 430 and 834, the petitioners contended that a motion in the trial court raised the issue and later moved for a correction of sentence under 28 U. S. C., Section 2255.

filed the return, Bowers and Potter having aided and abetted him were guilty as principals under 18 U. S. C., Section 2 (Pet. 27), on which the jury was charged (R. 1372). *Nye & Nissen* v. *United States,* 336 U. S. 613, 618–619; *United States* v. *Johnson,* 319 U. S. 503, 518.

Petitioners Potter and Bowers attack this holding, alleging that there is no evidence they had knowledge of the filing of the false return and that they therefore could not have been aiders or abettors. (Pet. 11.) This allegation is not supported by the record. Bowers was the secretary-treasurer of the corporation when the return was prepared. Together with Ward, he negotiated for the services of Joseph Feinbaum, the accountant who prepared the return from the corporate records and bank statements. (R. 20a–21a.) Potter, the vice president of the organization during this period, furnished its accountants with records of the bank deposits to be entered in the books. (R. 830a–831a.) Though he was aware of large cash receipts from the rental of loading equipment, he failed to advise the accountants of them. (R. 837a.) Both men withdrew cash for their own use which they knew had not been deposited or recorded. (R. 813a–814a, 825a–826a, 832a–833a.) The record thus amply supports the conclusion that both Potter and Bowers had knowledge that a false return was being filed and indeed "caused" it to be filed as charged in the indictment.

The question is therefore not reached in this case whether, in the absence of such proof, that portion of

an indictment specifically charging tax evasion by filing a false return may be disregarded as surplusage. (Pet. 11–13.) Compare *Vloutis* v. *United States,* 219 F. 2d 782, 790 (C. A. 5th).

3. Each of the petitioners urge that they were deprived of a fair trial by allegedly prejudicial newspaper publicity which they contend was generated by the United States Attorney. They complain that during the course of the trial he caused the indictment of their associate, Patrick J. Connolly, and issued a press release (set out at Pet. 5–6) which was prejudicial to them. (Pet. 13–14.) Specifically they refer to an article which appeared in the *New York Daily News* on February 24, 1956, the day following the release. This article, after relating that Connolly had been indicted as an "income tax dodger", described him as a former president of International Longshoremen's Association "pistol local" No. 824 and stated "[t]hree of that local's leaders, including former president Mickey Bowers, are on trial now on charges of trying to evade payment of $43,331 in corporate taxes due in 1951 from the Allied Stevedoring Corp. which they operated."[6] (Pet. 42.) They also complain of articles announcing the instigation of prosecution of three public loaders in the area on charges of failing to file in-

[6] The petitioners state that the court below in describing Bowers as the former president of Local 824 compounded the article's erroneous description of him as a former officer. (Pet. 14) In this they are in error. The article did in fact refer to him as the former president. (Pet. 42.)

come tax returns though admittedly they were not mentioned in them. (Pet. 7, 14.) Apparently their contention is that these publications induced the jurors to determine their guilt on the basis of their association with a union local in which a former officer was accused of a similar crime or because they had been engaged in an industry in which others had been indicted for tax offenses. This contention is also not supported by the record.

On the afternoon of February 24, 1956, the day following the Connolly indictment and press release, the trial court questioned the jurors to determine if any of them had read the resulting publicity. Five of them indicated that they had read the article carried in the *Daily News* that morning.[7] Each stated that his judgment had not been affected. (R. 618, 620–624.) None of them had discussed the article with their fellow jurors. (R. 626.) Nevertheless, the trial court instructed them that they should not permit newspaper articles to affect their judgment and that they should refrain from reading them until the trial had ended. (R. 627.) There is no showing, nor is it contended, that any of the articles alleged to be prejudicial were read after this instruction. On March 22, 1956, twenty-seven days later, the jurors retired to consider their verdict. (R. 3, 1477.) It appears plain that the verdict they returned was based on the evi-

[7] One juror had read an article concerning the Connolly indictment carried in the *New York Times*. (R. 620.) It did not mention the petitioners. (R. 25.) Another juror had read a similar article in the *World-Telegram* but stated that it made no reference to the petitioners. (R. 623.)

dence adduced in twenty-eight days of trial (R. 3, 1360), unbiased by an article read twenty-seven days previously which in no way purported to pass on the petitioners' guilt, and that the court below properly concluded that "there was nothing that by the widest stretch" could be regarded as intrusion into the jury's privacy. (Pet. 38.)[8]

4. Petitioners contend that the trial court erred in admitting into evidence a memorandum of a telephone call directed to Stephen S. Abbate, Superintendent of Terminals, American Export Lines (R. 410a), by William Denniston, his assistant (R. 400a; Pet. 14-

[8] The cases cited by the petitioners are distinguishable on their facts. The reversal in *Shepherd* v. *Florida*, 341 U. S. 50, was based on other grounds; newspaper articles read by the jurors which falsely stated that the defendants had confessed were criticized in a concurring opinion (pp. 51–55). In *Delaney* v. *United States*, 199 F. 2d 107 (C. A. 1st), and *Harrison* v. *United States*, 200 Fed. 662 (C. A. 6th), reversal occurred because publicity attendant to governmental operations not connected with the prosecution indicated the defendants were guilty. In *Delaney*, *supra*, it was held that a highly publicized congressional committee hearing had in effect tried the defendant shortly before the trial, and in *Harrison*, *supra*, the Post Office Department published a fraud order during the trial warning the public that the defendant was committing the very crime for which he was being tried. In *United States* v. *Rosenberg*, 200 F. 2d 666 (C. A. 2d), certiorari denied, 345 U. S. 965, though critical of publicity concerning the perjury indictment of a prospective Government witness who was to corroborate testimony already given in the Government's case, the court held (pp. 669–670) that it did not vitiate the jury's verdict. Similarly, in *Langer* v. *United States*, 76 F. 2d 817 (C. A. 8th), reversed on other grounds, the court refused to review the trial court's denial of a motion for a new trial based on the claim that the jury was prejudiced by publicity hostile to the defendants.

16). The memorandum was made by Louis Lechner, Abbate's clerk, who in his absence took the call and made a memorandum of it, pursuant to the regular office procedure. (R. 449a–451a.) The portion of the memorandum to which the petitioners object recorded that Denniston "telephoned * * * to advise that a Mickey Bowers informed him [Denniston] that any figures regarding the number of men used for loading at Pier 84, N. R. were not to be used by the American Export Lines, Inc.". (Pet. 9, 16.) They contend that this was multiple hearsay and therefore should not have been admitted. (Pet. 3, 14–16.)

As the court below points out, this contention mistakes the nature of Bowers' statement. (Pet. 30.) It was not an assertion of fact regarding the number of men loading on the pier but an instruction given directly to Denniston that figures should not be used by his company. As the petitioners concede (Pet. 16), it was introduced to show what Bowers had said. Accordingly, what Lechner recorded in the memorandum when Denniston called was not hearsay concerning any fact asserted by Bowers, for he had asserted none, but only a record of what Bowers had said. This was not hearsay. *Terry* v. *United States,* 51 F. 2d 49 (C. A. 4th); *Carantzas* v. *Iowa Mutual Insurance Co.,* 235 F. 2d 193 (C. A. 5th); *Ohio Associated Telephone Co.* v. *National Labor Relations Board,* 192 F. 2d 664 (C. A. 6th); *Bedell* v. *United States,* 78 F. 2d 358 (C. A. 8th), certiorari denied, 296 U. S. 628; *Fred Harvey Corp.* v. *Mateas,* 170 F. 2d 612 (C. A. 9th). The memorandum, having been

made in the regular course of business (R. 418a, 449a-450a), was admissible under 28 U. S. C., Section 1732, or, as the court below pointed out (Pet. 30), as Denniston's record of his past recollection transcribed by Lechner. *Brzezinski* v. *United States*, 198 Fed. 65 (C. A. 2d); *Wattenmaker* v. *United States*, 34 F. 2d 741 (C. A. 3d); *Shokuwan Shimabukuro* v. *Higeyoshi Nagayama*, 140 F. 2d 13 (C. A. D. C.), certiorari denied, 322 U. S. 755; *Ettelson* v. *Metropolitan Life Ins. Co.*, 164 F. 2d 660 (C. A. 3d), affirmed, 317 U. S. 188; *Hofstadter* v. *Ruderman*, 118 F. Supp. 477 (S. D. N. Y.); III Wigmore on *Evidence* (3d ed.) Sec. 751.*

5. Finally, the petitioners contend that the witness who identified the John White & Company records was incompetent to testify that they were kept in the regular course of the company's business and that they were therefore improperly admitted. (Pet. 16–17.) They state that he had no connection with the company or knowledge of its operations. (Pet. 17.) Again the facts do not sustain the petitioners' contention.

The records were identified by Walter T. Hampson as the daily records of disbursements and receipts made by John White (R. 67a), who had died prior to the trial. Mr. Hampson had instructed White to keep such records (R. 66a), and at the end of each week

* In *United States* v. *Grayson*, 166 F. 2d 863 (C. A. 2d), quoted by the petitioners (Pet. 15), documents summarizing hearsay information describing oil wells, though made in the regular course of business, were held inadmissible where a fact in issue was the value of the wells.

White submitted them to Hampson who entered the totals in them (R. 67a, 70a–71a) and prepared the firm's formal books from them (R. 78a). Whenever there was a question concerning an entry in them, the two men discussed it together. (R. 74a–75a). Mr. Hampson identified both his own and White's handwritten entries (R. 69a–70a) and testified that White had no other bookkeeper [10] (R. 75a). As this Court noted in *Palmer* v. *Hoffman,* 318 U. S. 109, 112–113, the legislative history of the Federal Business Record Act, now 28 U. S. C. 1732,[11] makes it clear that its purpose is to remove the common law hearsay restriction requiring every book entry to be identified by the entrant. See S. Rep. No. 1965, 74th Cong., 2d Sess., pp. 1–2, quoted in that case (pp. 112–113, fn. 3). The petitioners' contention here would permit only the entrant, the deceased Mr. White, to identify his entries. This result would be directly contrary to the purpose of the statute and the well-settled exception in the common law rule which permitted the introduction of the books of a deceased entrant without personal identification, obviously impossible in the circumstances. *Nicholls* v. *Webb,* 8 Wheat. 326; V Wigmore on *Evidence* (3d ed.) Sec. 1521. Moreover, it is not contended that Hampson was incompetent to identify the totalling entries which he regularly made in the records. These en-

[10] Petitioners state the court below erroneously described Hampson as an accountant. (Pet. 17.) Mr. Hampson testified that he was considered a bookkeeper. (R. 75a.)

[11] Formerly 28 U. S. C. 695, Act of June 20, 1936, c. 640, 49 Stat. 1561, Sec. 1.

tries are themselves records of Mr. White's business and admissible as such. *Stegemann* v. *Miami Beach Boat Slips,* 213 F. 2d 561 (C. A. 5th); *Smith* v. *United States,* 236 F. 2d 260 (C. A. 8th), certiorari denied, 352 U. S. 909; *Ilseng* v. *United States,* 120 F. 2d 823 (C. A. 9th), certiorari denied, 314 U. S. 665. As the court below correctly concluded, petitioners' objection to these records is "patently untenable." (Pet. 26.)

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition should be denied. However, since the petition at least tenders the question also involved in the *Achilli* and *Costello* cases (Nos. 430 and 834, and No. 666), this Court may wish to defer disposition of the petition until those cases are decided.

J. LEE RANKIN,
Solicitor General.
CHARLES K. RICE,
Assistant Attorney General.
JOSEPH M. HOWARD,
MARVIN O. GRANATH,
Attorneys.

APRIL 1957.

U. S. GOVERNMENT PRINTING OFFICE: 1957

FILED
MAY 4 1957
JOHN T. FEY, Clerk

Supreme Court of the United States

October Term, 1956

No. 842

ALLIED STEVEDORING CORPORATION, JOHN WARD, JOHN POTTER and MICHAEL BOWERS,
Petitioners,

vs.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONERS

NORMAN S. BEIER
445 Park Avenue
New York 22, New York
Attorney for Petitioners

BAR PRESS, INC., 84 LAFAYETTE STREET, NEW YORK 13, N. Y. — WA 9-3433